

# Washington Tariff & Trade Letter<sup>®</sup>

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

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## CENSUS PROPOSES MANDATORY AES FILING FOR ALL EXPORTS

All exports that currently require Shipper's Export Declarations (SEDs) will have to be submitted electronically through the Census Automated Export System (AES) under a proposal the Census Bureau published in the Feb. 17 Federal Register. The long expected requirement could be imposed by the end of 2005, depending on how long Census takes to review comments, issue a final regulation and give industry 90 days to come into compliance.

AES filing is already required for exports on the Commerce Control List (CCL) and the U.S. Munitions List (USML). Full automation of the export data system was mandated by Congress in the 2002 Foreign Relations Authorization Act.

In addition to proposing mandatory use of AES, the proposal would change the name of the Foreign Trade Statistics Regulation to the Foreign Trade Regulations (FTR). Among several other proposals, Census is proposing new rules for post-departure filing of export data through Option 4, restricting authorization for requesting eligibility to the U.S. Principle Party in Interest and requiring participants to be able to show their ability to meet AES requirements.

## DENIAL ORDER REVEALS ALLEGED EXPORTS TO CHINA

Behind a temporary denial order the Bureau of Industry and Security (BIS) issued against a Wisconsin firm and its owners Feb. 7 are allegations that the company obtained controlled electronic components and exported them to a firm in China that was supplying them to a Chinese government institute developing consumer and military technology and products. Documents filed in the case claim several U.S. firm were the source of these products.

The denial order covers Wen Enterprises (WE) of Manitowoc, Wis., its owner Ning Wen; his wife, Hailin Lin; and Beijing Rich Linscience Electronics Company (BRLE) of Beijing, China. Wen, Lin and two employees of BRLE, Jian Guo Qu and his wife, Ruo Ling Wang, were arrested in September by federal agents in Wisconsin. Their trial is scheduled to begin May 16.

According to an affidavit filed by BIS Special Agent Joel Christy in support of the criminal complaint against the four, the government had conducted an extensive investigation into the actions of the defendants, including the use of wire taps and search warrants. Christy also reported that Wen, who is a naturalized U.S. citizen, was recruited by the FBI and became an informant after he received his Ph.D. from the University of California in Berkeley and went to work for the Chinese consulates in San Francisco and Los Angeles. Lin, who is also a

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naturalized U.S. citizen, and Wen were released on bond after their arrest, but Qu and Wang, who are Chinese citizens, have remained in jail since then. BRLE was providing the exported components to China's Ministry of Information Industry and its Communications, Telemetry and Telecontrol Research Institute, also known as the 54<sup>th</sup> Research Institute.

Christy's affidavit claims WE obtained microcircuits made by Signal Processing Technologies (SPT) through a supplier, Sager Electronics. SPT learned about the export when someone from the 54<sup>th</sup> Research Institute emailed it seeking technical support for one of its chips. SPT employees claimed WE had been informed about export control requirements for the item. After learning about the export, Sager refused to sell WE any SPT circuits again.

The affidavit claimed WE bought Xilinx parts from another supplier, Avnet, and exported them to China after supplying Avnet with a Statement of Assurance that it would comply with export control rules. WE also obtained semiconductors from Future Electronics for two years, but it never purchased any products that were subject to export controls, Christy stated.

The government claims WE repacked the controlled items it bought from U.S. resources and shipped them in smaller packages via UPS and DHL to China, with false statements on their control status and understated values to avoid needing to file Shipper's Export Declarations (SEDs). [**Editor's Note**; Copy of denial order, criminal complaint, Justice press release and Christy's affidavit will be sent to WTTL subscribers on request.]

## **JUSTICE ASKS APPELLATE COURT TO LIFT BAR TO CHINA TEXTILE SAFEGUARDS**

A court order barring Commerce from proceeding with safeguard actions against Chinese apparel imports should be vacated and reversed because the Court of International Trade (CIT) lacked jurisdiction to interfere in the procedures of the Committee for the Implementation of Textile Agreements (CITA), the Justice Department argued in a Feb. 14 brief filed with the Court of Appeals for the Federal Circuit (CAFC). The jurisdiction issue was just one of several arguments Justice made to get the appellate court to lift the preliminary injunction imposed on CITA by CIT Judge Richard Goldberg (see **WTTL**, Jan. 31, page 2).

Justice raised a double jurisdiction challenge to Goldberg's ruling. On the first point, it claimed the suit by the U.S. Association of Importers of Textiles and Apparel (USA-ITA) was not ripe for judicial review because CITA had not yet reached a final decision on the safeguard petitions which could be challenged, and the association had not exhausted its available remedies.

On a broader point, it said CITA was acting under the president's authority to implement textile agreements and, thus, is not subject to judicial review. "This court has established that judicial review of CITA's action is limited to a determination of whether CITA has acted *ultra vires*," Justice wrote. It contended that Section 242 of China's WTO accession agreement, which authorized the textile safeguard process, falls under that authority from Section 204 of the 1956 Agriculture Act. "Thus, in the event CITA ultimately decides to invoke the paragraph 242 safeguard, the only justiciable issue – properly presented – would be whether China's Accession Agreement is an 'agreement limiting the export' from China 'and the importation into the United States...of any textiles or textile products under section 204,'" Justice claimed.

## **ANDEAN TALKS SHOW LOTS LEFT TO DO AND SHORT DEADLINE FOR FINISH**

Andean countries negotiating a free trade agreement with the U.S. have a clear target for completing the talks by this summer, but the number of unresolved issues in the negotiations may make that deadline hard to achieve. Negotiators for Colombia, Ecuador and Peru are aiming for a mid-2005 completion of negotiations to allow time for the full ratification process to be finished and an FTA in place before the end of 2006 when the current Andean Trade

Preferences Act is set to expire. During the latest round of talks which end Feb. 14, progress was made on proposals to reduce industrial tariffs, reported Assistant USTR Regina Vargo. But extensive work remains to be done in talks on agriculture, textiles, services, intellectual property rights and investment, she indicated.

“We’re very early on the curve with respect to agriculture,” she told reporters following the talks. “We still need to find a way forward for virtually all of U.S. agriculture priorities,” she said. To put focus on this area, working groups will hold a series of three meetings in March.

Two more general rounds of talks are planned for March and April. Vargo expects an easier time in negotiations on textile trade because the Andean countries already have trade preferences for these products under the ATPA and have domestic capacity that would allow them to accept the “yarn-forward” rule of origin the U.S. required in other FTAs.

### **STATE REVISES CLEARANCE RULES FOR VISA MANTIS REVIEWS**

Companies may find it easier to bring foreign employees and prospective customers to the U.S. under policy changes State announced Feb. 11 in the Visa Mantis program. Under the changes, foreigners, who will have access to sensitive technology or controlled goods while in America and who need to get inter-agency clearance before getting a visa, will have their clearance periods extended to match their U.S. visas.

The change could avoid additional Mantis reviews, if foreign visitors or students need to get a new U.S. visa for a return to the U.S. from their home country. The new policy applies to visas for students (F), exchange visitors (J), temporary workers (H), intracompany transferees (L) and tourist and business visitors (B).

The new policy means “that if the original visa has expired or a new visa application is filed to return to the previous study or work program in the United States, another Visa Mantis clearance may not be required,” State said. Consular officers, however, will have the discretion to ask for another clearance if they think one is warranted.

The new policy came just before the General Accountability Office (GAO), the investigatory arm of Congress, issued a report Feb. 18 on the Mantis program, confirming what State officials have been claiming about improvements in the system (see **WTTL**, Feb. 7, page 3). Compared to a year ago, when Mantis checks were taking an average of 67 days, the report said review times have dropped to an average of 15 days. The number of cases pending more than 60 days has declined significantly, GAO said.

### **PRESSURE MOUNTS FOR WTO CASE AGAINST CHINA’S IPR NON-ENFORCEMENT**

The U.S. business community is becoming less polite in trying to dance around China’s continuing failure to enforce intellectual property rights (IPR) and is urging the U.S. Trade Representative’s (USTR) office to begin preparations for a World Trade Organization (WTO) complaint against Beijing. The USTR “should immediately request consultations with China in the WTO and place China on the Priority Watch List in its upcoming 2005 Special 301 Report,” the U.S. Chamber of Commerce said in comments on the current out-of-cycle review of China.

The National Association of Manufacturers urged the USTR to name China a Special 301 Priority Foreign Country and also begin preparation for a WTO complaint. “Designating China in a lesser category, such as Priority Watch List, would send a signal that the United States was ‘pulling punches’ and did not view China’s lack of progress in cracking down on counterfeiting as being the most serious matter,” NAM added. Both organizations reported that their members have experienced more piracy and counterfeiting despite promises and some actions by Chinese officials to improve IPR enforcement. Enforcement of IPR may be the most important

weapon the U.S. has to compete against China's growing manufacturing and technology base and cheap labor, according to Ohio State University Professor Oded Shenkar, who has just published book called, "The Chinese Century." "We are marching toward two worlds: one that protect property rights and one that does not," he told an Asia Society conference Feb. 8. He said U.S. government leaders do not fully appreciate the importance of this battle.

\* \* \* BRIEFS \* \* \*

USTR: White House Feb. 18 said Deputy USTR Peter Allgeier will be acting USTR when Robert Zoellick becomes deputy secretary of State Feb. 22. Senate confirmed Zoellick's nomination Feb. 16. Race for Zoellick's successor reportedly remains close, with industry sources contending that Time-Warner executive Robert Kimmett has lead, but other sources saying Deputy USTR Josette Shiner remains in running (see WTTL, Jan. 10, page 1). Senate Finance Committee Chairman Charles Grassley (R-Iowa) has been urging appointment of Chief Agriculture Negotiator Allen Johnson, ex-aide to Grassley, to top USTR post.

STATE: Under Secretary for Economic Affairs Alan Larson will announce departure week of Feb. 21. Separately, career State officer Rose Likins has been named acting assistant secretary for political-military affairs to hold post vacated by Lincoln Bloomfield Jan. 20.

ITA: As reported previously in WTTL, Under Secretary for International Trade Grant Aldonas has formally announced resignation effective March 31 (see WTTL, Jan. 31, page 3).

CHINA: Ex-Im Bank Feb. 18 announced decision to make preliminary commitment to provide combination of loan guarantee and direct loans valued at \$5 billion to Westinghouse for sale of nuclear equipment to go into four nuclear plants in China. Preliminary commitment, which is non-binding, is intended to allow Westinghouse to bid on projects as part of request for proposals process. Final commitment would only come after more detailed review. Bechtel would also be major participant in deal.

WTO: Speaking to WTO Trade Negotiating Committee Feb. 14, Deputy USTR Peter Allgeier urged members to push to complete Doha Round by end of 2006. Key to reaching that goal will be having "endgame document" mapping path for last year of talks by time of WTO ministerial meeting in Hong Kong in December. To get there, progress must be made by this July, he told WTO members.

EXPORT ENFORCEMENT: Add another shotgun and sports equipment exporter to list of firms hit by BIS in recent crackdown (see WTTL, Feb. 14, page 1). Agency has reach settlement agreement with Williams Gun Sight Company of Davison, Mich., under which firm has agreed to pay \$123,000 civil fine to settle BIS charges that on 82 occasions it exported gun sighting devices to Canada without required export licenses. Firm will pay \$40,590 in fines in four payments throughout 2005. BIS will suspend and then waive balance of \$82,410, if firm remains in compliance with export controls.

MORE EXPORT ENFORCEMENT: BIS imposed \$5,000 civil fine on Stephen Midgley, production manager of Elatec Technology Corp. of Haverhill, Mass., for filing false statement on SED. He declared industrial furnace exported to Beijing Research Institute of Materials and Technology qualified for No License Required when it did not. BIS suspended and will waive \$4,000 of fine, if he stays in compliance.

EX-IM BANK: U.S. Attorney in Miami has announced sentencing of Hubert Garland Evans to 18 months in prison and \$723,000 restitution for filing false statements with Export-Import Bank in 1996. Garland, who is president and CEO of Prime Bahamas Limited, wholesaler/retailer in Bahamas, was convicted in January 2003 of filing false financial statements for now-defunct Jagar Limited. False statements, which claimed Jagar was solvent when it was not, allowed firm to obtain export credit insurance just before it failed.

SENATE: Sen. Max Baucus (D-Mont.) has hired Demetrios Marantis as Democratic trade counsel on Senate Finance Committee. Marantis had been special issues director for Sen. John Edwards (D-N.C.).

SUDAN: BIS is Feb. 18 Federal Register revised License Exception TMP to permit staff of certain organizations to carry phones, computers and satellite receivers to Sudan on humanitarian missions.

NAFTA: Binational dispute-settlement panel Feb. 11 remanded back to ITA its "sunset" ruling on oil country tubular goods from Mexico to review "other factors" Mexican exporter Tubos de Acero de Mexico, S.A. (TAMSA) had raised in case. "The panel considers the department's failure to consider TAMSA's 'other factors' conflicts with the mandate in the SAA and the statute that the department conduct a thorough investigation to determine as accurately as possible whether upon revocation of the antidumping order, dumping would be likely to continue or recur," panel wrote.